

EXHIBIT 97

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Sacramento, CA

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION:
PRICE LITIGATION) 01-CV-12257-PBS
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THIS DOCUMENT RELATES TO:) Judge Patti B. Saris
U.S. ex rel. Ven-A-Care of)
the Florida Keys, Inc. v.) Magistrate Judge
Abbott Laboratories, Inc.,) Marianne B. Bowler
et al.)
Case No. 06-CV-11337-PBS)
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WEDNESDAY, MARCH 19, 2008

--oOo--

VIDEOTAPED DEPOSITION OF

JAMES KEVIN GOROSPE

Reported By: JOANIE MURAKAMI, CSR No. 5199

Registered Merit Reporter

Certified Realtime Reporter

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<p>1 APPEARANCES</p> <p>2</p> <p>3 For Plaintiff United States:</p> <p>4</p> <p>5 United States Department of Justice</p> <p>6 BY: GEJAA GOBENA, TRIAL ATTORNEY</p> <p>7 601 D Street, NW</p> <p>8 Washington, D.C. 20004</p> <p>9 (202) 307-1088</p> <p>10</p> <p>11 For Plaintiff State of California:</p> <p>12</p> <p>13 Office of the Attorney General</p> <p>14 California Department of Justice</p> <p>15 Bureau of Medi-Cal Fraud & Elder Abuse</p> <p>16 BY: NICHOLAS N. PAUL,</p> <p>17 SUPERVISING DEPUTY ATTORNEY GENERAL</p> <p>18 JOHN FISHER, DEPUTY ATTORNEY GENERAL</p> <p>19 PO Box 85266</p> <p>20 110 West A Street, Suite 1100</p> <p>21 San Diego, California 92186</p> <p>22 (619) 688-6099</p>	<p>1 APPEARANCES (CONTINUED)</p> <p>2</p> <p>3 For Defendant Warrick:</p> <p>4</p> <p>5 Ropes & Gray</p> <p>6 BY: DANIEL J. BENNETT, ATTORNEY AT LAW</p> <p>7 One International Place</p> <p>8 Boston, Massachusetts 02110-2624</p> <p>9 (617) 951-7000</p> <p>10</p> <p>11 For Defendant Dey:</p> <p>12</p> <p>13 Kelley, Drye & Warren LLP</p> <p>14 BY: ANTONIA F. GIULIANA, ATTORNEY AT LAW</p> <p>15 101 Park Avenue</p> <p>16 New York, New York 10178</p> <p>17 (212) 808-7941</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
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<p>1 BE IT REMEMBERED, that on Wednesday,</p> <p>2 March 19, 2008, commencing at the hour of 8:33</p> <p>3 a.m., in the Offices of the California Department</p> <p>4 of Justice, 1300 I Street, Conference Room 1624,</p> <p>5 Sacramento, California, before me, JOANIE Y.</p> <p>6 MURAKAMI, a Certified Shorthand Reporter of the</p> <p>7 State of California, there personally appeared</p> <p>8</p> <p>9 KEVIN GOROSPE,</p> <p>10 called as a witness by the Defendant Abbott</p> <p>11 Laboratories, who, being by me first duly sworn,</p> <p>12 was thereupon examined and interrogated as</p> <p>13 hereinafter set forth.</p> <p>14</p> <p>15 THE VIDEOGRAPHER: Good morning. We're</p> <p>16 on the video record at approximately 8:33 a.m.</p> <p>17 My name is Monty Gordon in association of</p> <p>18 Henderson Legal Services in Washington, DC. The</p> <p>19 phone number is (202) 220-4158.</p> <p>20 This is a matter pending before the US</p> <p>21 District Court, District of Massachusetts, in a</p> <p>22 case captioned Ven-A-Care, et al. versus Abbott</p>	<p>1 MS. ALEXANDER: Janet Alexander for</p> <p>2 California Department of Health Care Services.</p> <p>3 MR. PAUL: Nicholas Paul, California</p> <p>4 Department of Justice for California.</p> <p>5 THE VIDEOGRAPHER: Will the court</p> <p>6 reporter please swear in the witness?</p> <p>7 (The witness was then sworn in by</p> <p>8 the Court Reporter.)</p> <p>9 THE VIDEOGRAPHER: You may proceed.</p> <p>10</p> <p>11 EXAMINATION</p> <p>12 BY MR. COLE:</p> <p>13 Q. Good morning, Dr. Gorospe.</p> <p>14 A. Good morning.</p> <p>15 Q. We've not met before today; is that</p> <p>16 right?</p> <p>17 A. That's correct.</p> <p>18 Q. Would you please state your name and</p> <p>19 your home address for the record, please?</p> <p>20 A. My name is James Kevin Gorospe. My</p> <p>21 home address is 2335 Estate Drive, Stockton,</p> <p>22 California, zip is 95209.</p>

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<p style="text-align: right;">Page 62</p> <p>1 other years, they didn't?</p> <p>2 A. Yes.</p> <p>3 Q. Are you a member today?</p> <p>4 A. No.</p> <p>5 Q. You're not. Have you been a member or</p> <p>6 were you ever a member during the time that you</p> <p>7 worked for the state?</p> <p>8 A. Yes.</p> <p>9 Q. And during the stretches where you have</p> <p>10 been a member, are you on some sort of mailing</p> <p>11 list or do you receive publications or</p> <p>12 announcements from the California Pharmacists</p> <p>13 Association from time to time?</p> <p>14 A. Yes.</p> <p>15 Q. And what about the California -- I'm</p> <p>16 sorry -- the American Pharmacists Association.</p> <p>17 How long have you been a member of that</p> <p>18 association?</p> <p>19 A. Same as California Pharmacists</p> <p>20 Association, off-and-on.</p> <p>21 Q. It's been off-and-on since the time</p> <p>22 you've been in pharmacy school?</p>	<p style="text-align: right;">Page 64</p> <p>1 whenever there has been political discussion or</p> <p>2 legislative discussion about adjusting the</p> <p>3 reimbursement formula, that the California</p> <p>4 Pharmacy Association has been involved in that</p> <p>5 process?</p> <p>6 MR. PAUL: Objection. Form.</p> <p>7 MR. GOBENA: Same objection.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. COLE:</p> <p>10 Q. Okay. And is it your experience that</p> <p>11 whenever there is a proposed reduction in</p> <p>12 pharmacy reimbursement, that the California</p> <p>13 Pharmacists Association has opposed those proposed</p> <p>14 reductions?</p> <p>15 MR. PAUL: Objection. Form.</p> <p>16 MR. GOBENA: Same objection.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. COLE:</p> <p>19 Q. Okay. Are you aware of any instance</p> <p>20 where the California Pharmacists Association</p> <p>21 supported a proposed reduction in the</p> <p>22 reimbursement formula?</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yes.</p> <p>2 Q. Are you a member of the American</p> <p>3 Pharmacists Association today?</p> <p>4 A. Yes.</p> <p>5 Q. And I take it from time to time, you</p> <p>6 would receive, during the stretches where you</p> <p>7 were a member, you would receive information from</p> <p>8 that association?</p> <p>9 A. Yes.</p> <p>10 Q. As a member of the California</p> <p>11 Pharmacists Association, would you agree with me</p> <p>12 that the association pays close attention to</p> <p>13 pharmacy issues?</p> <p>14 A. Yes.</p> <p>15 Q. And would you agree that the</p> <p>16 association pays particularly close attention to</p> <p>17 pharmacy reimbursement issues?</p> <p>18 MR. PAUL: Objection. Form.</p> <p>19 MR. GOBENA: Same objection.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. COLE:</p> <p>22 Q. And has it been your experience that</p>	<p style="text-align: right;">Page 65</p> <p>1 MR. PAUL: Objection. Form.</p> <p>2 MR. GOBENA: Same objection.</p> <p>3 THE WITNESS: No, I'm not.</p> <p>4 BY MR. COLE:</p> <p>5 Q. Over the years, have you subscribed to</p> <p>6 any pharmacy-related publications or periodicals</p> <p>7 in order to keep current on pharmacy issues?</p> <p>8 A. Yes.</p> <p>9 Q. List, if you could, list for me those</p> <p>10 publications, the ones you can recall.</p> <p>11 A. I can't recall by name any right now.</p> <p>12 Q. Okay. You don't remember a particular</p> <p>13 magazine or news publication that you've</p> <p>14 received?</p> <p>15 A. Pharmacist's Letter, Drug Topics.</p> <p>16 Q. And who puts out the Pharmacist's</p> <p>17 Letter?</p> <p>18 A. The Pharmacist's Letter. It's its own</p> <p>19 publication.</p> <p>20 Q. I see.</p> <p>21 A. Yeah.</p> <p>22 Q. What about Drug Topics?</p>

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<p>1 for identification.)</p> <p>2 BY MR. COLE:</p> <p>3 Q. I've handed you Exhibit 10. I'll give</p> <p>4 you a moment to look at it.</p> <p>5 The document's titled Report on the</p> <p>6 Proceedings of the Task Force on Medi-Cal Drug</p> <p>7 Costs. It's dated March of 2000. It's Bate</p> <p>8 stamped CAAG/DHS 0071578 through 71627.</p> <p>9 Do you recognize this document?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Were you part of the task force on</p> <p>12 Medi-Cal drug costs in or around 2000?</p> <p>13 A. Yes.</p> <p>14 Q. And was this task force created by the</p> <p>15 then Governor of the State of California?</p> <p>16 A. Yes.</p> <p>17 Q. And that was Gray Davis at the time?</p> <p>18 A. Yes.</p> <p>19 Q. And the document sort of describes some</p> <p>20 of the background and the organization of the</p> <p>21 task force.</p> <p>22 If you could, describe for me in your</p>	<p>1 any sections of it?</p> <p>2 A. I have to look to see if any of this --</p> <p>3 I don't recall.</p> <p>4 Q. Well, if you go to page -- if you go to</p> <p>5 Attachment 1, which is Bate Stamped 71584, it</p> <p>6 lists -- it says: Medi-Cal Drug Task Force</p> <p>7 Grouping of Options for Pro/Con Analysis.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And then it lists five main categories:</p> <p>11 Education, disease management, contracting</p> <p>12 issues, reimbursement issues and other?</p> <p>13 A. Yes.</p> <p>14 Q. Which of those categories were you</p> <p>15 involved in?</p> <p>16 A. I believe I was involved in all of the</p> <p>17 categories in terms of organizational --</p> <p>18 organizing the groups.</p> <p>19 Q. Did you focus more on certain</p> <p>20 categories than others?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. But you recall being involved or having</p>
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<p>1 words the genesis of the task force and who</p> <p>2 comprised the task force.</p> <p>3 A. The genesis of the task force is stated</p> <p>4 at the top of the document, coming from the</p> <p>5 Governor's Budget, which required a task force be</p> <p>6 generated headed by the Secretary of Health and</p> <p>7 Human Services, who was Grantland Johnson, at the</p> <p>8 time, to discuss options for controlling drug</p> <p>9 costs in the Medi-Cal program.</p> <p>10 Q. Fair to say that the task force was</p> <p>11 created to explore ways in which the Medi-Cal</p> <p>12 program could save money?</p> <p>13 A. Yes.</p> <p>14 Q. How big was the task force in terms of</p> <p>15 number of people?</p> <p>16 A. The numbers of individuals are listed</p> <p>17 on the very last two pages of the document.</p> <p>18 Those are the invited participants.</p> <p>19 Q. Did you prepare this document?</p> <p>20 A. The final document? This document?</p> <p>21 No.</p> <p>22 Q. Did you have any role -- did you draft</p>	<p>1 a role in each of the five categories?</p> <p>2 A. Yes.</p> <p>3 Q. If you go to the preceding page, before</p> <p>4 Attachment 1, 71583, in the paragraph titled</p> <p>5 Reimbursement Issues, it says: Reimbursement</p> <p>6 issues are those that would impact the payments</p> <p>7 made to pharmacies for drug ingredient costs or</p> <p>8 for professional fees. There was considerable</p> <p>9 more reluctance by the task force to consider</p> <p>10 issues of cost containment in reimbursement to</p> <p>11 pharmacies for either drug ingredient costs or</p> <p>12 the professional fee. A primary reason for the</p> <p>13 reluctance appeared to be a concern over access</p> <p>14 to services by beneficiaries.</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. And is that consistent with your</p> <p>18 understanding about the conclusions reached by</p> <p>19 the task force that there was considerable more</p> <p>20 reluctance to consider cost containment in the</p> <p>21 context of pharmacy reimbursement because that</p> <p>22 might negatively impact access to care?</p>

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<p>1 MR. PAUL: Objection. Form.</p> <p>2 MR. GOBENA: Same objection.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. COLE:</p> <p>5 Q. And sort of put in plain terms, the</p> <p>6 concern was if you drop the reimbursement level,</p> <p>7 then Medi-Cal beneficiaries might not get the</p> <p>8 care that they need --</p> <p>9 MR. PAUL: Objection. Form.</p> <p>10 BY MR. COLE:</p> <p>11 Q. -- because pharmacies will either go</p> <p>12 out of business or withdraw from the program.</p> <p>13 MR. PAUL: Sorry. I didn't mean to</p> <p>14 interrupt you.</p> <p>15 Objection. Form.</p> <p>16 MR. GOBENA: Same objection.</p> <p>17 THE WITNESS: Yes.</p> <p>18 BY MR. COLE:</p> <p>19 Q. If you go to Page 23 of this document,</p> <p>20 it's 71611, it's in a section titled Cost Control</p> <p>21 Options Matrix, and for various topics, it has</p> <p>22 sort of a summary of what the proposed change</p>	<p>1 A. Yes.</p> <p>2 Q. And would you agree that it was the</p> <p>3 view of DHS, at this time, that whatever Medi-Cal</p> <p>4 was paying for drug ingredient costs, did not</p> <p>5 approximate the pharmacy's actual acquisition</p> <p>6 cost?</p> <p>7 MR. PAUL: Objection. Form.</p> <p>8 MR. GOBENA: Same objection.</p> <p>9 THE WITNESS: Are you referring to the</p> <p>10 statement that's in this document as proof of</p> <p>11 DHS's position?</p> <p>12 BY MR. COLE:</p> <p>13 Q. Yes.</p> <p>14 A. I would disagree with that comment</p> <p>15 then.</p> <p>16 Q. I'm just asking you if -- let me put it</p> <p>17 this way: Would you agree with me that DHS</p> <p>18 understood, in 2000, that there were ways, if it</p> <p>19 so desired, to come up with a reimbursement</p> <p>20 formula that more closely approximated</p> <p>21 pharmacists' actual acquisition costs?</p> <p>22 MR. PAUL: Objection. Form.</p>
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<p>1 would be, and then it lists some pros for the</p> <p>2 change and some cons for the change.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Do you remember drafting any of these</p> <p>6 pro/con matrices?</p> <p>7 A. No, I do not.</p> <p>8 Q. Do you remember having any input in the</p> <p>9 drafting of these pro/con matrices?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know who drafted these Pro/Con</p> <p>12 matrices?</p> <p>13 A. I don't recall which individuals did</p> <p>14 that.</p> <p>15 Q. Okay. Page 23 of Exhibit 10, it says:</p> <p>16 Change ingredient cost reimbursement of drugs,</p> <p>17 and then it lists -- has some bullet points</p> <p>18 there: Decrease the amount Medi-Cal pays for</p> <p>19 drug ingredient costs to something that more</p> <p>20 closely approximates the pharmacy's actual</p> <p>21 acquisition cost.</p> <p>22 Do you see that?</p>	<p>1 MR. GOBENA: Same objection. It's also</p> <p>2 my understanding this witness is not here to</p> <p>3 testify on behalf of the agency.</p> <p>4 BY MR. COLE:</p> <p>5 Q. You can go ahead and answer.</p> <p>6 A. Yes.</p> <p>7 Q. And then it describes the current</p> <p>8 formula, and then in the next bullet, it says:</p> <p>9 Replaces AWP and the direct price reimbursement</p> <p>10 methodology with AWP minus X percent or wholesale</p> <p>11 acquisition costs plus Y percent, and then it</p> <p>12 says: State regulation change or legislation is</p> <p>13 required.</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And under the pros section, one of the</p> <p>17 bullets listed, the fourth one down, says: Would</p> <p>18 be in line with methodology other states use for</p> <p>19 reimbursement.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what that means?</p>

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<p>1 \$17.</p> <p>2 A. Based on the information we've just</p> <p>3 discussed, yes.</p> <p>4 Q. Are you familiar with the term</p> <p>5 "spread"?</p> <p>6 A. Yes.</p> <p>7 Q. And what do you understand that to</p> <p>8 mean?</p> <p>9 A. My understanding of spread, as it</p> <p>10 relates to pharmaceuticals or prescription drugs,</p> <p>11 is the difference between what a provider</p> <p>12 purchases a product for and what they are</p> <p>13 reimbursed for that same product.</p> <p>14 Q. Looking solely at this column, average</p> <p>15 wholesale price minus five percent, would you</p> <p>16 agree with me that there are wide variations in</p> <p>17 the AWP's for this particular generic product?</p> <p>18 A. Yes.</p> <p>19 Q. And again, the numbers listed here</p> <p>20 aren't the AWP's. They're AWP's minus five</p> <p>21 percent, but if you gave each one of them a boost</p> <p>22 to compensate for that, you would have some of</p>	<p>1 product with an AWP of roughly one-third of that.</p> <p>2 A. That is accurate.</p> <p>3 Q. And again, anyone in DHS who you know</p> <p>4 was pouring through or reading this report, would</p> <p>5 be able to -- would have learned that there were</p> <p>6 these wide variations in AWP's for generic</p> <p>7 products --</p> <p>8 MR. GOBENA: Object to --</p> <p>9 BY MR. COLE:</p> <p>10 Q. -- correct?</p> <p>11 MR. GOBENA: Sorry. Objection.</p> <p>12 THE WITNESS: That is correct.</p> <p>13 (Exhibit Gorospe 017 was marked</p> <p>14 for identification.)</p> <p>15 BY MR. COLE:</p> <p>16 Q. I marked Exhibit 17.</p> <p>17 Dr. Gorospe, this is a Proposed Rule</p> <p>18 excerpt from the Code of Federal Regulations,</p> <p>19 Federal Register, Volume 39, Number 230, dated</p> <p>20 November 27, 1974, and I'm reading from the</p> <p>21 bottom of the document.</p> <p>22 Have you ever referred to or seen this</p>
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<p>1 the products having an AWP of somewhere around,</p> <p>2 in the \$21 range, and some products having an AWP</p> <p>3 of half of that, correct?</p> <p>4 A. As you previously discussed, the AWP</p> <p>5 would be somewhere in the \$17 range for the</p> <p>6 upper, the higher priced products, and the other</p> <p>7 products would be below, because these numbers</p> <p>8 include the dispensing fee, as you previously</p> <p>9 noted.</p> <p>10 Q. Good point. The AWP, at least to that</p> <p>11 second product, would be somewhere in the \$17</p> <p>12 range, and if we looked at this first product</p> <p>13 listed, the one from Goldline, if you back out</p> <p>14 the dispensing fee, that figure drops to \$5.37?</p> <p>15 A. That's correct.</p> <p>16 Q. So the AWP would be somewhere between -</p> <p>17 - somewhere around \$6 roughly, maybe a little</p> <p>18 less?</p> <p>19 A. Yes, that's correct.</p> <p>20 Q. I wasn't a math major. So you would</p> <p>21 have one product with an AWP of around \$17, one</p> <p>22 generic product, and a therapeutically equivalent</p>	<p>1 regulation, proposed regulation before?</p> <p>2 A. Not that I can recall.</p> <p>3 Q. Okay. You were probably in junior high</p> <p>4 or high school at the time.</p> <p>5 A. High school.</p> <p>6 Q. Okay. But since the time that you've</p> <p>7 joined Medi-Cal, did you ever have occasion to</p> <p>8 review this proposed rule?</p> <p>9 A. Not that I can recall, no.</p> <p>10 Q. If you look towards the top of the</p> <p>11 middle column, it says -- there's a section</p> <p>12 called "acquisition costs."</p> <p>13 A. I'm sorry. Where? Oh, I see it.</p> <p>14 Q. It says: In referring to drug cost,</p> <p>15 current regulations specify cost as determined by</p> <p>16 the state. Most states use average wholesale</p> <p>17 price. Red Book data, Blue Book data, survey</p> <p>18 results or similar standard costs. Such standard</p> <p>19 prices are frequently in excess of actual</p> <p>20 acquisition costs to the retail pharmacist.</p> <p>21 Thus, to achieve maximum savings to the Medicaid</p> <p>22 program, the proposal requires the use of actual</p>

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Gorospe, James Kevin

March 19, 2008

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<p style="text-align: right;">Page 238</p> <p>1 A. No.</p> <p>2 Q. Did you have occasion to read Barron's</p> <p>3 during your time at DHS?</p> <p>4 A. No.</p> <p>5 Q. Okay. Do you have any reason to</p> <p>6 disagree with what's stated here, as reported by</p> <p>7 Barron's, in that the true cost for the drugs</p> <p>8 they looked at, that Barron's looked at, that the</p> <p>9 acquisition cost was 60 to 85 percent below AWP</p> <p>10 for generic drugs?</p> <p>11 MR. PAUL: Objection. No foundation.</p> <p>12 MR. GOBENA: Same objection.</p> <p>13 THE WITNESS: I don't have a basis to</p> <p>14 know whether or not the statement is accurate.</p> <p>15 BY MR. COLE:</p> <p>16 Q. In your experience as a pharmacist,</p> <p>17 before you joined Medi-Cal, was it your</p> <p>18 understanding that the acquisition cost -- that</p> <p>19 the percentage discount off of AWP was greater</p> <p>20 for generic drugs than for brand name drugs?</p> <p>21 MR. GOBENA: Objection. Form.</p> <p>22 MR. PAUL: Same objection.</p>	<p style="text-align: right;">Page 240</p> <p>1 Q. Okay. Fair enough. If you were</p> <p>2 looking at spread as simply the difference</p> <p>3 between AWP and acquisition cost, would you --</p> <p>4 has it been your experience, in your 25 years as</p> <p>5 a pharmacist, that the spread for generic drugs</p> <p>6 is greater than the spread for brand drugs?</p> <p>7 MR. GOBENA: Objection. Form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. COLE:</p> <p>10 Q. And that's what these reports that</p> <p>11 we've looked at today seem to indicate, correct?</p> <p>12 MR. PAUL: Objection. No foundation.</p> <p>13 MR. GOBENA: Same objection.</p> <p>14 THE WITNESS: Based on our previous</p> <p>15 discussion, yes.</p> <p>16 BY MR. COLE:</p> <p>17 Q. And this report notes, or at least in</p> <p>18 reference to the Barron's article, that the</p> <p>19 discount off of AWP for generic drugs was 10 to</p> <p>20 20 percent while the discount off of AWP for</p> <p>21 generic drugs -- do I need to start that over?</p> <p>22 Yes, I do.</p>
<p style="text-align: right;">Page 239</p> <p>1 THE WITNESS: Yes.</p> <p>2 BY MR. COLE:</p> <p>3 Q. In other words, the spread on generic</p> <p>4 drugs was greater than the spread on brand name</p> <p>5 drugs?</p> <p>6 MR. GOBENA: Objection. Form.</p> <p>7 BY MR. COLE:</p> <p>8 Q. Is that fair?</p> <p>9 A. I can't speak to whether that's true or</p> <p>10 not.</p> <p>11 Q. In your experience?</p> <p>12 A. I don't recall if the spread was</p> <p>13 greater in one versus the other.</p> <p>14 Q. Okay. But these reports that we've</p> <p>15 looked at earlier today indicate that, correct?</p> <p>16 MR. PAUL: Objection. No foundation.</p> <p>17 MR. GOBENA: Same objection.</p> <p>18 THE WITNESS: Given the definition of</p> <p>19 "spread," I would have to know two points of fact</p> <p>20 which would be the acquisition cost and the</p> <p>21 reimbursement rate.</p> <p>22 BY MR. COLE:</p>	<p style="text-align: right;">Page 241</p> <p>1 Regarding this Barron's article, the</p> <p>2 difference between true cost and AWP for brand</p> <p>3 name drugs was 10 to 20 percent, while the</p> <p>4 difference between the true cost and AWP for</p> <p>5 generic drugs was 60 to 85 percent, correct?</p> <p>6 A. That's what this states, yes.</p> <p>7 Q. And if you go flip a few pages back to</p> <p>8 the findings and recommendations page, it</p> <p>9 indicates that the -- at least in the time period</p> <p>10 covered by this report, that the invoice price</p> <p>11 for brand name drugs was a national average of</p> <p>12 18.3 percent below AWP.</p> <p>13 Do you see that?</p> <p>14 A. Yes, I do.</p> <p>15 (Exhibit Gorospe 020 was marked</p> <p>16 for identification.)</p> <p>17 BY MR. COLE:</p> <p>18 Q. Here's Exhibit 20. This is another</p> <p>19 HHS-OIG report. It's dated August 1997 and it's</p> <p>20 entitled Medicaid Pharmacy Actual Acquisition</p> <p>21 Cost of Generic Drug Prescription Products.</p> <p>22 Do you recognize this report?</p>

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY)

AVERAGE WHOLESALE PRICE)

LITIGATION)

_____)

THIS DOCUMENT RELATES TO) MDL No. 1456

State of California, ex rel.) Civil Action:

Ven-A-Care v. Abbott) 01-12258-PBS

Laboratories, Inc., et al.)

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VOL. II

--oOo--

MONDAY, SEPTEMBER 22, 2008

--oOo--

VIDEOTAPED DEPOSITION OF

J. KEVIN GOROSPE, Pharm.D.

--oOo--

Reported By: CAROL NYGARD DROBNY, CSR No. 4018

Registered Merit Reporter

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<p style="text-align: right;">Page 591</p> <p>1 A. Yes.</p> <p>2 Q. Second to the last paragraph on that</p> <p>3 page the first sentence reads "It is clear and well</p> <p>4 documented that pharmacy reimbursement</p> <p>5 methodologies that rely on AWP and a low dispensing</p> <p>6 fee overpay pharmacies for drug ingredient costs</p> <p>7 and underpay them for the cost of dispensing the</p> <p>8 drug."</p> <p>9 Did I read that correctly?</p> <p>10 A. Yes.</p> <p>11 Q. Is that consistent with your</p> <p>12 understanding of pharmacy reimbursement methodology</p> <p>13 that rely on AWP?</p> <p>14 A. Yes.</p> <p>15 Q. And how long have you had that</p> <p>16 understanding?</p> <p>17 A. Again, as I previously stated, the late</p> <p>18 nineties.</p> <p>19 Q. If you turn to page 2, you'll see that</p> <p>20 under the heading "Drug Ingredient Costs" the first</p> <p>21 paragraph goes through some of the findings of the</p> <p>22 Myers and Stauffer study that we talked about</p>	<p style="text-align: right;">Page 593</p> <p>1 implemented minus 10 percent occurred before or</p> <p>2 after June of 2002?</p> <p>3 A. That is correct.</p> <p>4 Q. You would agree with me, though, that</p> <p>5 the rate study was referenced in the state's</p> <p>6 attempts to -- in the state's communications with</p> <p>7 CMS to seek approval of the AWP minus 10 percent?</p> <p>8 A. Yes.</p> <p>9 Q. The last paragraph on that page --</p> <p>10 Scratch that.</p> <p>11 The second to the last -- the second to</p> <p>12 last paragraph in the page, last sentence, states</p> <p>13 "Therefore, the Department proposed using a single</p> <p>14 and differentiated rate equal to AWP minus 20</p> <p>15 percent."</p> <p>16 Do you understand that to mean that the</p> <p>17 -- that they were not proposing to reimburse</p> <p>18 generics differently?</p> <p>19 A. That is correct.</p> <p>20 Q. And then the first sentence of the</p> <p>21 following paragraph states "A rate of AWP minus 20</p> <p>22 percent is still significantly higher than the</p>
<p style="text-align: right;">Page 592</p> <p>1 earlier; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And in the last sentence it reads "It's</p> <p>4 clear from the information that the Department's</p> <p>5 current rate of AWP minus 10 percent does not</p> <p>6 accurately reflect the drug acquisition costs in</p> <p>7 the marketplace;" correct?</p> <p>8 A. Yes.</p> <p>9 Q. Do you agree with that statement or is</p> <p>10 that consistent with your understanding at the</p> <p>11 time?</p> <p>12 A. Yes.</p> <p>13 Q. The rate referenced there, AWP minus 10</p> <p>14 percent, was adopted after the study was performed;</p> <p>15 correct?</p> <p>16 A. I don't recall.</p> <p>17 Q. The rate of AWP minus 10 percent was --</p> <p>18 didn't become effective until after the Myers and</p> <p>19 Stauffer study was released; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. I take it you don't recall whether the</p> <p>22 specific legislation or budget proposal that</p>	<p style="text-align: right;">Page 594</p> <p>1 pharmacy acquisition cost of generic drugs."</p> <p>2 Did I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. Is that consistent with your</p> <p>5 understanding at the time?</p> <p>6 A. Yes.</p> <p>7 Q. Did you have that understanding also</p> <p>8 going back to the late nineties, that AWP minus 20</p> <p>9 percent is significantly higher than pharmacy</p> <p>10 acquisition costs for generic drugs?</p> <p>11 A. Yes.</p> <p>12 Q. Last sentence of that paragraph or that</p> <p>13 page, I guess, going over to the next page, "The</p> <p>14 reimbursement of generic drugs will still be</p> <p>15 significantly above pharmacy's acquisition costs."</p> <p>16 And then it goes on.</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. Do you understand that to --</p> <p>20 Withdrawn.</p> <p>21 So was it your understanding to the</p> <p>22 extent you recall this proposal that the</p>

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<p style="text-align: right;">Page 595</p> <p>1 reimbursement rate of AWP minus 20 percent was made</p> <p>2 knowing that reimbursement on that basis would be</p> <p>3 significantly higher than acquisition costs for</p> <p>4 generic drugs?</p> <p>5 A. Yes.</p> <p>6 Q. And then the -- further down on that</p> <p>7 page there's a paragraph with the heading "Impact</p> <p>8 on Access" that refers to stakeholder meetings.</p> <p>9 Do you recall having stakeholder meetings</p> <p>10 prior to this legislative proposal?</p> <p>11 A. Not that I can recall.</p> <p>12 Q. Do you recall during any discussions for</p> <p>13 changing the reimbursement rate having meetings</p> <p>14 with stakeholders?</p> <p>15 A. Not that I -- not that I can recall.</p> <p>16 Q. Do you have an understanding as to what</p> <p>17 the document -- is referring to when it refers to a</p> <p>18 "stakeholder"?</p> <p>19 A. Yes.</p> <p>20 Q. Would that be a reference to providers</p> <p>21 of medical -- Medi-Cal?</p> <p>22 A. Yes, amongst others.</p>	<p style="text-align: right;">Page 597</p> <p>1 want to make sure that that objection's on the</p> <p>2 record and while we would prevail on whatever</p> <p>3 motion was required to retract this, I would ask</p> <p>4 that all the testimony that was given in connection</p> <p>5 with it be redacted, but, obviously, we'll take</p> <p>6 that up later.</p> <p>7 VIDEOGRAPHER: This is the end of tape</p> <p>8 two, volume two, of the deposition of Kevin</p> <p>9 Gorospe.</p> <p>10 We are off the record at 2:21 p.m.</p> <p>11 (Thereupon a recess was taken at 2:21</p> <p>12 p.m. and the deposition resumed at 2:31</p> <p>13 p.m.)</p> <p>14 VIDEOGRAPHER: This is the beginning of</p> <p>15 tape three, volume two, of the deposition of Kevin</p> <p>16 Gorospe.</p> <p>17 We are back on the record at 2:31 p.m.</p> <p>18 MR. BENNETT: I'd like to mark this</p> <p>19 Exhibit 53, I think we're on.</p> <p>20 (Exhibit Gorospe 053 was marked for</p> <p>21 Identification.)</p> <p>22 BY MR. BENNETT:</p>
<p style="text-align: right;">Page 596</p> <p>1 Q. And others might be beneficiaries, other</p> <p>2 organizations that have some interest in the -- in</p> <p>3 the Medi-Cal program?</p> <p>4 A. That's correct.</p> <p>5 Q. Would you agree that this paragraph</p> <p>6 reflects consideration on the part of --</p> <p>7 Or is it your understanding of this</p> <p>8 paragraph that Medi-Cal was considering whether the</p> <p>9 proposed change would affect beneficiaries' access</p> <p>10 to care?</p> <p>11 A. Yes.</p> <p>12 Q. And do you recall in 2004 when rate</p> <p>13 changes were discussed considering access to care</p> <p>14 as a -- a policy matter?</p> <p>15 A. Yes.</p> <p>16 MR. BENNETT: I think we need to break</p> <p>17 for a tape. So --</p> <p>18 MR. PAUL: Okay. Just to restate my</p> <p>19 concern earlier with regard to this, I think I</p> <p>20 stated on the record but I'm not sure I mentioned</p> <p>21 that we were talking about Exhibit 52, although I'm</p> <p>22 sure it's fairly obvious from the transcript, but I</p>	<p style="text-align: right;">Page 598</p> <p>1 Q. Exhibit 53 has labeled CAAG/DHS 0084626</p> <p>2 and 627.</p> <p>3 Dr. Gorospe, do you recognize this</p> <p>4 document?</p> <p>5 A. Yes.</p> <p>6 Q. Can you describe it for us?</p> <p>7 A. It appears to be a description of</p> <p>8 Medi-Cal pharmacy reimbursement related to a</p> <p>9 reimbursement proposal and various data related to</p> <p>10 acquisition cost of drugs relevant to AWP, also</p> <p>11 describes briefly points about the -- study of</p> <p>12 Medi-Cal pharmacy reimbursement.</p> <p>13 Q. Did you draft this document?</p> <p>14 A. Not that I can recall, no.</p> <p>15 Q. Do you recall receiving a copy of the</p> <p>16 document?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know who would have drafted it,</p> <p>19 if not yourself?</p> <p>20 A. Somebody within the Pharmacy Section.</p> <p>21 Q. And the Pharmacy Section, as you've</p> <p>22 described with the previous document, encompasses</p>

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